

ORDINANCE NO. 90-47

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ENACTED TO PROTECT ENVIRONMENTALLY SENSITIVE LANDS IN THE COUNTY, TO BE KNOWN AS THE PALM BEACH COUNTY ENVIRONMENTALLY SENSITIVE LANDS ORDINANCE; PROVIDING FOR THE PROTECTION AND PRESERVATION OF ENVIRONMENTALLY SENSITIVE LANDS; PROVIDING FOR AN ENVIRONMENTAL IMPACT ASSESSMENT PROCESS; PROVIDING FOR REGULATING DEVELOPMENT; PROVIDING FOR ACQUISITION OF SUCH LANDS UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR CERTAIN EXEMPTIONS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, certain geographic areas in Palm Beach County contain high-quality native upland Florida ecosystems ("environmentally sensitive lands"); and

WHEREAS, these environmentally sensitive lands provide important and valuable support services such as groundwater retention and recharge, flood and erosion control, and enhancement of air and water quality; and

WHEREAS, endangered, threatened and rare plant and animal species, and species of special concern to the State of Florida are part of, and dependent on, these environmentally sensitive lands; and

WHEREAS, these environmentally sensitive lands are part of the heritage of Palm Beach County's citizens, provide show places for visitors and enhance the overall quality and diversity of life in Palm Beach County; and

WHEREAS, alteration or destruction of these environmentally sensitive lands will cause an irreparable aesthetic, educational, scientific, and cultural loss to the citizens and visitors of Palm Beach County, and result in a potential harm to and degradation of groundwater, surface waters and air quality; and

WHEREAS, environmentally sensitive lands have been identified by Palm Beach County through scientific inventory and designated by the Palm Beach County Board of County Commissioners as significant resources of countywide concern; and

WHEREAS, the Board of County Commissioners desires to discourage the harm recited above and maintain the biological diversity of Palm Beach County by protecting these environmentally sensitive lands from degradation and loss.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA that:

Section 1. SHORT TITLE; APPLICABILITY.

1.01 This Ordinance shall be known as the "Palm Beach County Environmentally Sensitive Lands Ordinance."

1.02 The recitations set forth in the "WHEREAS" paragraphs above are incorporated by reference herein as findings of fact upon which this Ordinance is based.

1 1.03 All provisions of this Ordinance shall be effective within the
2 unincorporated and incorporated areas of Palm Beach County, Florida, and shall set
3 restrictions, constraints and requirements to preserve and protect environmentally
4 sensitive lands.

5 1.04 This Ordinance shall be liberally construed to effect the purposes set
6 forth herein.

7 1.05 This Ordinance shall apply to the alteration, as herein defined, of
8 land in any manner which has the potential to impact the values and functions of
9 those sites identified as being "A" quality native uplands in the Inventory of
10 Native Ecosystems in Palm Beach County ("environmentally sensitive lands").

11
12 Section 2. PURPOSE.

13 The purpose of this Ordinance is to preserve and protect the values and
14 functions of environmentally sensitive lands from land alterations that would
15 result in the loss of these lands or significant degradation of their values and
16 functions.

17
18 Section 3. PROHIBITIONS.

19 No person, firm, corporation, governmental entity, or special district shall
20 cause the alteration of environmentally sensitive lands, unless such alteration
21 is exempted or approved under this Ordinance.

22
23 Section 4. DEFINITIONS.

24 4.01 The following definitions apply within this Ordinance:

- 25 (a) Alteration. The result of human-caused activity which modifies,
26 transforms, or otherwise changes environmentally sensitive lands,
27 including, but not limited to, placement of vehicles, structures, debris
28 or any other material objects thereon, including introduction or
29 injection of water or other substance; and removal, displacement or
30 disturbance of plant or animal species, soil, rock, minerals or water.
- 31 (b) Board. The Board of County Commissioners of Palm Beach County, Florida.
- 32 (c) Canopy. The upper portions of trees, consisting of limbs, branches, and
33 leaves, which constitute the upper layer of a forested community.
- 34 (d) County. Palm Beach County, Florida.
- 35 (e) Department. The Palm Beach County Department of Environmental Resources
36 Management.
- 37 (f) Ecosystem. An assemblage of living organisms (plants, animals,
38 microorganisms, etc.) and nonliving components (soil, water, air, etc.)
39 that functions as a dynamic whole through organized energy flows.
- 40 (g) Environmentally Sensitive Lands. Ecological sites (ecosites), other
41 than wetlands, that are designated in the Inventory of Native Ecosystems
42 in Palm Beach County and on its accompanying aerial photographs as "A"
43 quality, representing high-quality native Florida upland ecosystems.
44 These sites are indicated on the aerial photographs (received on May 30,
45 1989) that are on file at the Department of Environmental Resources
46 Management and are incorporated herein by reference.
- 47 (h) Ground Cover. Plants, other than turf grass, normally reaching an

1 average maximum height of not more than twenty-four (24) inches at
2 maturity.

- 3 (i) Invasive Non-Native Plant Species. Any plant not indigenous to this
4 state, which exhibits, or has the potential to exhibit, uncontrolled
5 growth and invasion or alteration of the natural qualities of any native
6 ecological community, as specified in the Vegetation Protection and
7 Preservation Ordinance.
- 8 (j) Inventory of Native Ecosystems in Palm Beach County. Reports and
9 annotated aerials produced during the study with this title, which was
10 conducted by consultants under contract to Palm Beach County.
- 11 (k) Listed Species. Species listed as endangered, threatened, rare or of
12 special concern by one or more of the following agencies:
13 (1) U.S. Fish and Wildlife Service.
14 (2) Florida Game and Fresh Water Fish Commission.
15 (3) Florida Committee on Rare and Endangered Plants and Animals.
16 (4) Florida Department of Agriculture.
- 17 (l) Mitigation. An action or series of actions that will offset the adverse
18 impacts to the native upland ecosystems in Palm Beach County that cause
19 a project to be not permittable.
- 20 (m) Understory. The complex of woody, fibrous, herbaceous, and grass and
21 sedge plant species typically associated with a forested community.
- 22 (n) Wetland. Any persistent water body or area characterized by the
23 dominance of those submerged and/or transitional wetland species listed
24 in the Florida Administrative Code, Rule 17-3 and located within or up
25 to three (3) miles directly offshore of Palm Beach County. Dominance
26 shall be defined in accordance with Florida Administrative Code Rule
27 17-3.021(10) and shall be determined in the appropriate plant stratum
28 (canopy, subcanopy, or ground cover) as outlined in Florida
29 Administrative Code Rule 17-3.022(1).

30
31 Section 5. NOTIFICATION OF AFFECTED PROPERTIES.

32 Prior to or within sixty (60) days of adoption of said Ordinance, the
33 Department shall identify, through the Property Appraiser's Office, owners of
34 properties that are designated as Environmentally Sensitive Lands, and shall send
35 a notification of this Ordinance, via certified mail, to all affected property
36 owners.

37
38 Section 6. DELETION OF SITES FROM INVENTORY.

39 Pursuant to direction by the Board issued on October 3, 1989, the Department
40 shall have begun and shall continue to delete from the Inventory of Native
41 Ecosystems in Palm Beach County those sites or portions of sites:

- 42 (a) Upon which alteration has legally occurred and the environmentally
43 sensitive land no longer retains the natural values and functions on
44 which the designation of environmental sensitivity was based; or
45 (b) Which are granted an exemption under Sections 7 or 8 of this Ordinance.
- 46 Once a site is deleted from the Inventory of Native Ecosystems in Palm Beach
47 County, it shall not be subject to further regulation under this Ordinance.

1 Section 7. EXEMPTION FOR PRIOR ALTERATION.

2 7.01 An exemption from this Ordinance is available for any project whereby,
3 upon the effective date hereof:

- 4 (a) The environmentally sensitive land has been altered prior to the
5 adoption of this Ordinance; and
6 (b) The land alteration occurred pursuant to valid permits from all
7 applicable regulatory entities; and
8 (c) The environmentally sensitive land no longer retains the natural values
9 and functions on which the designation of environmental sensitivity was
10 based.

11 7.02 This Ordinance shall not apply to existing legal uses for which, upon
12 the effective date hereof, a level of use has been documented. Documented uses
13 may continue at this same level; however, an increased level of use or a change
14 in use shall come under the regulatory scope of this Ordinance.

15 7.03 An applicant who desires an exemption from this Ordinance must submit
16 an application for exemption to the Department, with accompanying evidence that
17 he or she is entitled to the exemption pursuant to this section. This application
18 should include, at a minimum, a description of the nature and date of the
19 alteration, documentation of prior approval(s), a site location map, photographs,
20 and, if possible, a recent aerial photograph clearly delineating the location of
21 the property. The Department shall make a determination of the applicant's
22 eligibility for an exemption and render a written decision thereon within thirty
23 (30) days of receipt by the Department of the application for exemption and all
24 information necessary to make the exemption determination. An applicant may
25 appeal the Department's decision within fourteen (14) days of receipt of the
26 Department's final action.

27
28 Section 8. EXEMPTION FOR SINGLE-FAMILY RESIDENTIAL LOTS.

29 8.01 An exemption from this Ordinance is available for any single-family
30 residential lot whereby, upon the effective date hereof, the lot contains less
31 than 4 acres of environmentally sensitive lands.

32 8.02 An applicant who desires an exemption from this Ordinance must submit
33 an application for exemption to the Department, with accompanying evidence that
34 he or she is entitled to the exemption pursuant to this section. This application
35 should include, at a minimum, a site location map, a copy of the lot survey, and,
36 if possible, a recent aerial photograph clearly delineating the location of the
37 property. The Department shall make a determination of the applicant's
38 eligibility for the exemption and render a written decision thereon within thirty
39 (30) days of receipt by the Department of the application for exemption and all
40 information necessary to make the exemption determination. An applicant may appeal
41 the Department's decision within fourteen (14) days of receipt of the Department's
42 final action.

43
44 Section 9. EXEMPTION FOR PRESERVE MANAGEMENT ACTIVITIES.

45 An exemption from this Ordinance is available for preserve management
46 activities on publicly- or privately-owned lands, provided that:

- 1 (a) The preserve area is designated as such by deed restriction,
2 conservation easement, dedication to a public entity or approved private
3 conservation group for the purpose of preservation, or such other
4 similar protective measure as determined by the appropriate governmental
5 entity; and
6 (b) The purpose of the activity is protection and preservation of the
7 natural values and functions of the ecological communities present, such
8 as clearing of firebreaks for prescribed burning or construction of
9 fences; and
10 (c) The owner or management entity provides documentation of such
11 designation and purpose to the Department prior to undertaking the
12 activity. Such documentation need be provided only once for a
13 particular site if an approved long-term management plan for the area
14 is included.

15 The use of native plant communities, existing roads or trails, etc. as firebreaks
16 is preferred to the construction of new access roads or fire lanes that would
17 result in the introduction and spread of invasive non-native plant species.
18

19 Section 10. EXEMPTION FOR VESTED DEVELOPMENT RIGHTS.

20 10.01 An exemption from this Ordinance is available for any project for
21 which, upon the effective date hereof:

- 22 (a) A building permit has been issued; or
23 (b) A site plan approval has been issued; or
24 (c) A subdivision approval pursuant to County subdivision plat law has been
25 issued; or
26 (d) A master plan approval has been issued; or
27 (e) Any municipal equivalent of a, b, c, or d, above has been issued; or
28 (f) A complete application for a, b, c, d, or e, above was submitted on or
29 before August 22, 1989; or
30 (g) A valid Development of Regional Impact Order has been issued; or
31 (h) A sufficiency notification for a Development of Regional Impact has been
32 issued by the Treasure Coast Regional Planning Council; and
33 (i) The approval granted has not expired or a substantial change to the
34 development plan, as defined in the Palm Beach County Zoning Code,
35 Chapter IV, Section 402.7A., has not been made.

36 10.02 An applicant who desires an exemption from this Ordinance must submit
37 an application for exemption to the Department, with accompanying evidence that
38 he or she is entitled to the exemption pursuant to this section. This application
39 must include copies of supporting documentation evidencing the applicable approval
40 under Section 10.01 (a) through (i). The Department shall make a determination
41 of the applicant's eligibility for the exemption and render a written decision
42 thereon within thirty (30) days of receipt by the Department of the application
43 and all information needed to make the exemption determination. An applicant may
44 appeal the Department's decision within fourteen (14) days of receipt of the
45 Department's final action.

46 10.03 If an applicant, in good faith, upon an act or omission of the County
47 or municipality, has made such a substantial change in position or has incurred

1 extensive obligations and expenses that application of this Ordinance would be
2 highly inequitable and unjust by destroying the right acquired, then the applicant
3 may submit to the Department an application for exemption under this section, with
4 all accompanying documentation to evidence the existence of said vested right.
5 The application shall be reviewed by the Palm Beach County Attorney's Office
6 within sixty (60) days of submittal of all documentation needed to evaluate the
7 requested exemption.

8 10.04 Any project that has received a development approval pursuant to the
9 criteria established in Section 12 shall be exempt from further consideration
10 unless the approval granted is no longer applicable due to the expiration of the
11 permit or approval or because a substantial change has been made to the
12 development plan, as defined in the Palm Beach County Zoning Code, Chapter IV,
13 Section 402.7A.
14

15 Section 11. REVIEW PROCEDURES FOR PROPOSED LAND ALTERATION.

16 11.01 Any application to the County or a municipality involving proposed
17 alteration of environmentally sensitive lands shall include an environmental
18 impact study identifying the effects that the proposed alteration would have on
19 the property. An application form developed by the Department shall be completed
20 and submitted with the study. It shall be the responsibility of the Department
21 to review said study and prepare the evaluations and recommendations specified
22 herein.

23 11.02 The Department's evaluation of the proposed alteration or development
24 shall be based on this study submitted by the property owner or his or her
25 designee. For residential lots five (5) acres or less in size, and containing 4
26 acres or more of environmentally sensitive lands, the Department shall complete
27 the site assessment needed to make an evaluation of the proposed development
28 project. A statement from the Department declaring the capability of the site
29 plan to fulfill the intent of this Ordinance shall then be provided. For all
30 other projects, the property owner or designated agent shall provide the following
31 information:

32 (a) Complete Application Form

33 (b) Site Conditions

- 34 (1) Site location map - with the specific property clearly indicated.
35 (2) Aerial photograph - with the specific property and acreage clearly
36 indicated (Scale: 1" = 600' or less).
37 (3) Map of existing terrestrial and aquatic vegetation, including
38 invasive non-native plant species and native plant community types.
39 A description of each native plant community type, including
40 canopy, understory, and ground cover, shall be provided.
41 (4) Soil type(s) and condition(s).
42 (5) List of listed species found on site.
43 (6) Colonial bird nesting or roosting areas or areas in which migratory
44 species are known to concentrate.
45 (7) Archaeologically and/or historically significant features.
46 (8) Geologically significant features.
47

(9) Areas of previous disturbance or degradation, including present and past human uses of site.

(10) Surrounding land uses.

(c) Project Design

(1) Conceptual footprint of site development, including buildings, roadways, parking areas, utilities, water features, flood control structures, stormwater systems, wellfield locations, landscaped areas, buffer areas, preserve areas, agricultural activities, and other open space areas, at the same scale and as an overlay to vegetation mapping detailed in Section 11.02(b)(3) above.

(2) Existing zoning.

(3) Status of development approvals, including permit applications.

(d) Project Operation

(1) Description of proposed operations to be performed on site, including use, storage, handling, or production of substances known to be harmful to plants and/or animals.

(2) Identification of any pollutants expected to be emitted during project operation.

(3) Identification of solid wastes generated and disposal methods expected to be used.

(e) Project Alternatives

(1) Discussion of project alternatives should be provided, including options considered and rejected and the rationale for rejection of each option considered.

(2) Mitigation considerations should be discussed in detail as they relate to possible loss of habitat or impact on listed species.

(f) All drawings for applications other than work on a private single-family residential lot shall be sealed or certified by:

(1) A Florida registered professional engineer; or

(2) A Florida registered professional surveyor; or

(3) A Florida registered professional landscape architect; or

(4) An Environmental Professional certified by the National Association of Environmental Professionals.

11.03 Any additional information reasonably determined to be required by the Department must be requested by the Department within thirty (30) days of receipt of the above information. In the event no such request is made by the Department within said thirty (30) day period, then it shall be conclusively presumed that the application is in all respects complete. For the purpose of this Ordinance, the applicant shall not have met the procedural requirements for the submittal of a complete application for a development order until a complete environmental study report has been submitted.

11.04 Upon receipt of the complete application, the Department shall review and evaluate the environmental impacts of said proposal in light of the goals of this Ordinance. The Department shall work with the applicant and other environmental agencies to provide for the best possible development proposal to satisfy the goals of this Ordinance as well as allowing for sound development of the property. To allow approval of the development proposal, the Department shall

1 provide its comments to the appropriate governmental development review authority
2 or authorities within forty-five (45) days of receipt of a complete application
3 so that conditions may be placed on the approval reasonably necessary to minimize
4 adverse environmental impacts, as described in this Ordinance. For those projects
5 that do not otherwise require a development order, the Department shall issue an
6 approval by letter within forty-five (45) days of receipt of a complete
7 application if the applicant meets the standards listed in Section 12 .

8 11.05 Should the Department decide that public acquisition of the property
9 should be considered as the best option to protect these environmentally sensitive
10 lands proposed for development, the Department shall initiate action before the
11 Board of County Commissioners and/or other appropriate municipal entity for
12 consideration of such possibility. Action on the development application shall
13 be deferred by the governmental development review authority for a period of time
14 not to exceed sixty (60) days while said agencies consider the public acquisition
15 of said land. At the expiration of the sixty (60) day period, the development
16 application shall be allowed to proceed through the development approval process,
17 subject to appropriate conditions as described in Section 12, unless the land has
18 been acquired or interest in public acquisition is formally confirmed.

19 11.06 Should the Board and/or other municipal entity decide that public
20 acquisition is the best option to protect all or part of these environmentally
21 sensitive lands proposed for development, approval of the proposed development
22 will be deferred for a one hundred eighty (180) day period. This will allow time
23 to effect public acquisition. The Board shall adopt acquisition criteria by
24 resolution prior to consideration of any acquisition.

25 11.07 Should the Board and/or other municipal entity decide not to acquire
26 all or part of the particular site containing environmentally sensitive lands, the
27 development application, as modified for any lands acquired by the public, shall
28 be allowed to proceed through the development approval process, subject to
29 appropriate conditions as described in Section 12.

30 11.08 The applicant shall submit one hundred dollars (\$100) plus ten dollars
31 (\$10) per acre of environmentally sensitive lands with the environmental study to
32 defer the Department's cost of processing. The application fee is limited to a
33 maximum of five thousand dollars (\$5,000). No application shall be deemed
34 complete without the specified fee payment.

35
36 Section 12. APPROVAL CRITERIA FOR PROPOSED LAND ALTERATION.

37 12.01 After consideration of the Department's recommendations, the proposed
38 land alteration shall be approved by the appropriate governmental development
39 review authority if:

- 40 (a) The project design provides for the protection and preservation of the
41 values and functions of the environmentally sensitive lands, including
42 maintenance without infringement by facilities for drainage or utility
43 easements; and
44 (b) At a minimum, twenty-five percent (25%) of the environmentally sensitive
45 lands shall be set aside in a preserve status. Lands to be preserved
46 shall be identified based on the quality of habitats, the presence of
47 listed species, proximity to other natural areas and other relevant

1 factors. Alteration within the preserve shall require Department
2 approval, and shall be limited to the construction of boardwalks,
3 pervious walkways, and other passive recreational or educational
4 facilities; the construction of firebreaks, fire lanes, or fence lines;
5 and the removal of invasive non-native species and their replacement
6 with native species. The use of native plant communities, existing
7 roads and trails, etc. as firebreaks is preferred to the construction
8 of new access roads or fire lanes, which would result in the
9 introduction and spread of invasive non-native plant species. The
10 preserve area shall be identified on the site plan or plat required for
11 approval of a proposed development. The appropriate governmental
12 development review authority shall have the option to designate the
13 portion of environmentally sensitive lands which shall be preserved.
14 Such areas shall be preserved in viable condition, with intact canopy,
15 understory and groundcover; and

16 (c) A management plan of the preserve area shall be prepared by the
17 applicant and shall include, but not be limited to, eradication and
18 continued monitoring and removal of invasive non-native plant species,
19 control of off-road vehicles, and maintenance of hydrological
20 requirements. Periodic controlled burning or other mechanical methods
21 that would simulate the natural processes of the natural historic fire
22 regime may be required for some areas; and

23 (d) For those lands identified for preserve status, appropriate deed
24 restrictions shall be placed on said lands and recorded in the public
25 records of Palm Beach County, or they may be dedicated to a public
26 entity or approved private conservation group for the purposes of
27 preservation, or appropriate restrictive conservation easements granted
28 in perpetuity may be established, or such other similar protective
29 measures as determined by the appropriate governmental entity, upon
30 completion of all review processes hereunder. A conservation easement
31 shall be established for a preserve area on a single-family residential
32 lot. The deed restriction or conservation easement shall be dedicated
33 to the County or appropriate municipal entity; and

34 (e) Clustering of development on less sensitive portions of the site shall
35 be considered; and

36 (f) For a site on which listed species are present, one of the following
37 criteria can be satisfied:

38 (1) The applicant successfully demonstrates that the proposed
39 action will not preclude the continued survival and viability
40 of those listed species located on the site; or

41 (2) The applicant presents a plan for relocation, either on-site
42 or off-site, for those listed species, which has been reviewed
43 and approved by all appropriate agencies.

44 (g) All reasonable efforts, as determined by the Department, shall be made
45 to link the preserve area to preserves, sanctuaries, refuges, parks, or
46 open-space areas on adjacent lands to provide a corridor for movement
47 of wildlife.

1 12.02 If the environmentally sensitive lands, together with on-site
2 wetlands, are greater than six hundred forty (640) acres in size and are owned by
3 a single entity, the County or a municipal entity shall allow for the
4 consideration of a master plan which provides a minimum twenty-five percent (25%)
5 preserve area and flexibility to define the preserve area or adjust its boundaries
6 accordingly as development proceeds. This master plan shall include the
7 information identified in Section 11.02(b) to enable the Department to distinguish
8 intra-site differences in the quality of the environmentally sensitive lands.
9 This master plan shall be submitted in lieu of the submittal requirements outlined
10 in Section 11, with the exception of Section 11.08 (fees). For lands identified
11 for preserve status, protective measures as determined acceptable by the
12 appropriate governmental entity shall be implemented. Upon consideration,
13 approval will be granted provided that:

- 14 (a) The minimum twenty-five percent (25%) preserve area is maintained; and
15 (b) The master plan and designated preserve boundaries are approved by the
16 County or municipal entity.

17 12.03 The use of transfer of development rights, land banking, and other
18 mechanisms that would allow preservation of larger tracts of environmentally
19 sensitive land is hereby encouraged.
20

21 Section 13. CASH PAYMENT/LAND BANK OPTION AND MAINTENANCE REQUIREMENT FOR
22 WAIVER OF PRESERVE AREA FOR PUBLIC WORKS PROJECTS.

23 13.01 A governmental entity may request a waiver of the establishment of a
24 preserve area for a public works project, provided that:

- 25 (a) The applicant provides a feasibility study to the Department which
26 describes the alternatives to the proposed project that would cause less
27 degradation or loss of environmentally sensitive lands that have been
28 considered and discusses the rationale for each option rejected; and
29 (b) A cash payment is made or a land bank credit is obtained; and
30 (c) No listed species have been determined to exist on the site; and
31 (d) If the proposed public works project is adjacent to other
32 environmentally sensitive land, the maintenance plan for the project
33 site and for the right-of-way, if the project is a roadway, shall
34 include a provision requiring these areas to be maintained to prevent
35 the introduction of invasive non-native plant species and their spread
36 to the adjacent environmentally sensitive lands.

37 Non-public works projects are not eligible for the cash payment/land bank option,
38 and must comply with the review procedures for proposed land alteration specified
39 in this Ordinance.

40 13.02 The Board or appropriate municipality shall have the option of
41 accepting a cash payment in lieu of preservation. Cash payments shall be
42 deposited into a Natural Areas Fund to be established by the County for the
43 acquisition and management of environmentally sensitive lands and wetlands. The
44 cash payment shall be at least equivalent to the average per acre appraised value,
45 at the time of waiver application, multiplied by the number of acres required to
46 be preserved. Payment shall be provided to the County prior to any alteration or
47 development activities.

1 13.03 The Board or appropriate municipality shall have the option of
2 accepting a land bank credit in lieu of preservation. An upland ecological
3 communities land bank may be established by a governmental entity for mitigation
4 of upland impacts associated with a public works project that involves the
5 construction of new public works facilities or additions to existing facilities.
6 The land bank shall be located within Palm Beach County and shall provide at least
7 equivalent-quality ecological communities to those that would be altered on the
8 site of the proposed project. The site of the land bank shall be large enough to
9 provide for long-term maintenance of the native ecological communities present and
10 to support mitigation for additional public works projects or have the potential
11 to do so through acquisition of adjacent properties with similar ecological
12 communities. For a particular public works project, the ecological community or
13 communities used for credit at the land bank site must be of the same type and
14 quality as the community or communities altered as a consequence of the public
15 works project. Two (2.0) acres of land in the land bank must be set aside for
16 every one (1.0) acre altered by the proposed project. The lands in the bank shall
17 be set aside in perpetuity by deed restriction, conservation easement, or other
18 appropriate mechanisms. The deed restriction, conservation easement, or other
19 mechanism shall be dedicated to the County or appropriate municipal entity.

20 13.04 Land for the mitigation bank must be purchased in advance of
21 construction of the public works project. The public entity that owns the bank
22 may sell or trade credits to other public entities, provided that the initial
23 public entity retains ownership of a majority (fifty percent [50%] or greater) of
24 the site. Credit from the land bank shall be given for each project as it
25 proceeds through the development review process. The land bank site must be
26 maintained and managed to preserve its natural values and functions and to ensure
27 the survival of any listed species present on the site. Such management shall
28 include, but not be limited to, removal of exotic species, prescribed burning, and
29 fencing to prevent off-road vehicle use. Public use of land bank lands for
30 passive recreational activities shall be encouraged; these activities shall be
31 managed to ensure protection of the functions and values of the site. A
32 management plan shall be developed by the initial owner and approved by the
33 County. All other owners shall cooperate with the initial owner in implementing
34 this management plan.

35 13.05 Restoration activities shall be permitted on portions of the site
36 where such activities would benefit the long-term viability of the plant and
37 animal communities present or restore communities that historically were present.
38 A minimum of ten percent (10%) of the funds contributed for the acquisition of the
39 land bank shall be designated for site management and maintenance of the
40 ecological communities.

41 13.06 The success of the first land bank shall be evaluated by the County
42 prior to the development of additional banks.

43 13.07 If listed species are determined to exist on the site, the cash
44 payment or land bank option may be approved if one of the following criteria can
45 be satisfied:

- 46 (a) The applicant successfully demonstrates that the proposed action will
47 not preclude the continued survival and viability of those listed

1 species located on the site; or

- 2 (b) The applicant presents a plan for relocation of those species either on-
3 site or off-site, which has been reviewed and approved by all
4 appropriate agencies.

5
6 Section 14. APPEALS.

7 An applicant may appeal a final determination of the Department made pursuant
8 to Sections 6, 7, 8, 9, or 10.02 of this Ordinance to the Environmental Ordinance
9 Appeals Board. An appeal must be made within fourteen (14) days of the
10 applicant's receipt of the Department's final action. Each hearing shall be held
11 within sixty (60) days of submittal of all documents which the Environmental
12 Ordinance Appeals Board deems necessary to evaluate the appeal. At the conclusion
13 of the hearing, the Environmental Ordinance Appeals Board shall orally render its
14 decision (order), based on evidence entered into the record. The decision shall
15 be stated in a written order and mailed to the applicant not later than ten (10)
16 days after the hearing. Decisions of the Environmental Ordinance Appeals Board
17 shall be final. An applicant or the Department may appeal a final written order
18 of the Environmental Ordinance Appeals Board within thirty (30) days of the
19 rendition of the written order by filing a petition for Writ of Certiorari in
20 Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County,
21 Florida.

22
23 Section 15. VIOLATIONS, ENFORCEMENT, PENALTIES.

24 15.01 Failure to comply with the requirements of this Ordinance or any
25 permit or approval granted or authorized hereunder shall constitute a violation
26 of this Ordinance. Violations of the provisions of this Ordinance, upon
27 conviction, shall be punished by a fine not to exceed five hundred dollars (\$500)
28 per violation, or by imprisonment in the County jail not to exceed sixty (60)
29 days, or by both fine and imprisonment pursuant to the provisions of Section
30 125.69, Florida Statutes. A minimum violation of this Ordinance shall be the
31 alteration of environmentally sensitive land in any manner defined by this
32 Ordinance, up to 0.10 acres in extent. Alteration of each additional 0.10-acre
33 tract of environmentally sensitive land or portion thereof in violation of this
34 Section shall constitute a separate violation of this Ordinance. Cumulative
35 violations shall be determined by the addition of each 0.10-acre tract of
36 environmentally sensitive land or portion thereof, whether altered in the same
37 manner or in a different manner, as defined by this Ordinance. Additionally,
38 damage to the environmentally sensitive lands may result in an order to restore
39 to pre-existing site conditions.

40 15.02 In addition to the sanctions contained herein, the County and/or other
41 municipal entity may take any other appropriate legal action, including, but not
42 limited to, administrative action and requests for temporary and permanent
43 injunctions to enforce the provisions of this Ordinance. It is the purpose of
44 this Ordinance to provide additional cumulative remedies.

45 15.03 Violations of this Ordinance shall be referred by the Department to
46 the Groundwater and Natural Resources Protection Board for corrective actions and
47

1 civil penalties and coordinated with the appropriate municipal entity, if
2 applicable.

3 15.04 All monies collected pursuant to Sections 13 and 15 shall be deposited
4 in Natural Areas Fund to be established for the acquisition and management of
5 environmentally sensitive lands and wetlands. A minimum of ten percent (10%) of
6 the monies deposited in the Natural Areas Fund each year shall be available for
7 management of lands acquired by the County as natural areas.

8
9 Section 16. ASSESSMENT OF ENVIRONMENTALLY SENSITIVE LANDS.

10 16.01 Pursuant to Section 193.501, Florida Statutes, owners of
11 environmentally sensitive lands other than areas set aside as preserves may, for
12 a term of not less than 10 years:

13 (a) Convey the development rights to the County; or

14 (b) Covenant with the County that such land shall be subject to the
15 conservation restrictions provided in Section 704.06, Florida Statutes,
16 for conservation easements or not be used for any purpose other than
17 passive outdoor recreational or park purposes.

18 16.02 The lands which are subject to such conveyance or covenant shall be
19 assessed relative to their value for the present use as restricted by the
20 conveyance or covenant under this section. Such restrictions on land uses and
21 property value assessments shall be in accordance with Section 193.501, Florida
22 Statutes.

23
24 Section 17. COORDINATION WITH MUNICIPALITIES AND OTHER AGENCIES.

25 The County shall coordinate with municipalities and other agencies regarding
26 the purchase, protection and passive use of the environmentally sensitive lands
27 and their component species that may be acquired under the provisions of this
28 Ordinance.

29
30 Section 18. REPEAL OF LAWS IN CONFLICT.

31 All local laws and ordinances applying to the unincorporated areas of Palm
32 Beach County in conflict with any provisions of this Ordinance are hereby repealed
33 to the extent of such conflict.

34
35 Section 19. SEVERABILITY.

36 If any section, paragraph, sentence, clause, phrase, or word of this
37 Ordinance is for any reason held by the Court to be unconstitutional, inoperative
38 or void, such holding shall not affect the remainder of this Ordinance.

39
40 Section 20. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

41 The provisions of this Ordinance shall become and be made a part of the Code
42 of Laws and Ordinances of Palm Beach County, Florida. The sections of this
43 Ordinance may be renumbered or relettered to accomplish such, and the word
44 "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 21. EFFECTIVE DATE.

The provisions of this Ordinance shall become effective upon receipt of acknowledgement by the Secretary of State.

APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on the 20th day of November, 1990.

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By

Chairman

NOV 20 1990

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

County Attorney

JOHN B. DUNKLE, CLERK
Board of County Commissioners

By

DEPUTY CLERK

Acknowledgement by the Department of State of the State of Florida, on this,
the 30th day of November, 1990.

EFFECTIVE DATE: Acknowledgement from the Department of State received on the
7th day of December, 1990, at 12:51 P.M., and filed in the
Office of the Clerk of the Board of County Commissioners of Palm Beach County,
Florida.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, JOHN B. DUNKLE, ex-officio Clerk of the
Board of County Commissioners certify this to
be a true and correct copy of the original filed in
my office on 11/20/90

DATED at West Palm Beach, FL on 12/12/90

JOHN B. DUNKLE, Clerk,

By:

D.C.